

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

W.R. GRACE & CO., *et al.*,

Debtors.

Chapter 11

Case No. 01-01139 (JKF)

Jointly Administered

Ref. No. 14853

**LIBBY CLAIMANTS' LIMITED OBJECTION TO PROPOSED ORDER
AMENDING CASE MANAGEMENT ORDER FOR THE ESTIMATION
OF ASBESTOS PERSONAL INJURY LIABILITIES**

Claimants injured by exposure to asbestos from the Debtors' operations near Libby, Montana (the "Libby Claimants"),¹ by and through their counsel, Cohn Whitesell & Goldberg LLP and Landis Rath & Cobb LLP, hereby submit this limited objection to the proposed new Amended Case Management Order for the Estimation of Asbestos Personal Injury Liabilities (the "Proposed Amended PI CMO") submitted to this Court under a Certification of Counsel Regarding Order Amending Case Management Order for the Estimation of Asbestos Personal Injury Liabilities (the "COC") [Docket No. 14853] dated March 13, 2007. Specifically, the Libby Claimants object to the proposed June 15, 2007 sur-reply deadline. As grounds therefor, the Libby Claimants state:

1. Pursuant to a previous Case Management Order for the Estimation of Asbestos Personal Injury Liabilities, on October 3, 2006, the Libby Claimants filed expert reports by Dr. Alan C. Whitehouse and Dr. Arthur L. Frank on matters other than number, amount, and value of present and future asbestos claims. Pursuant to the Proposed Amended PI CMO, the parties are

¹ As identified in the Amended and Restated Verified Statement of Cohn Whitesell & Goldberg LLP and Landis Rath & Cobb LLP Pursuant to Fed. R. Bankr. P. 2019 [Docket No. 13940], as it may be amended and restated from time to time.

authorized to file supplemental or rebuttal reports by their non-statistical experts (such as Dr. Whitehouse and Dr. Frank) on May 10, 2007 and then sur-reply reports on June 15, 2007.

2. The proposed June deadline represents an extreme hardship for the Libby Claimants. It falls only five weeks after the May 10 deadline for supplemental/rebuttal reports by non-statistical experts and only four weeks after the May 17 deadline for reports to be filed by statistical experts (*i.e.*, those opining as to the number, amount, and value of present and future asbestos claims). These periods do not provide adequate time for Dr. Whitehouse and Dr. Frank to respond to the May 10 and May 17 reports by Grace's experts.

3. Dr. Whitehouse and Dr. Frank do not act primarily as medical experts in legal matters. Dr. Whitehouse is a practicing physician at the Center for Asbestos Related Disease in Libby, Montana and must attend to patient care first. Dr. Frank's activities include teaching, research, and departmental administration, among other professional demands unrelated to Grace's bankruptcy case. They bear the burden of responding to nine of Grace's non-statistical experts (although the Libby Claimants represent only a fraction of the asbestos personal injury claims against Grace, they have been the target of nine out of Grace's 14 non-statistical experts), as well as any Libby-related aspects of Grace's statistical expert reports. The Libby Claimants are the only constituency participating in the personal injury estimation proceeding whose fees and expenses are not being borne by the estate²—resulting in a disparity of resources that Grace is clearly attempting to exploit by disproportionately targeting the Libby Claimants. In sum, it is impractical, unreasonable and contrary to due process for the Libby Claimants to be required to meet a June 15 deadline for expert sur-reply reports.

² On February 20, 2006, the Libby Claimants filed the Libby Claimants' Motion for Payment of Certain Expenses in Connection with Claims Estimation and Plan Process (the "Motion") [Docket No. 11867]. The Court denied the Motion without prejudice on May 18, 2006 [Docket No. 12450].

4. If the Proposed Amended PI CMO is entered in its current form, the Libby Claimants will do their best to comply with all applicable deadlines, but entry of the Proposed Amended PI CMO should not be construed to limit the Libby Claimants from requesting an extension of the June 15, 2007 deadline if, once the reports of Grace's experts have been received, the deadline proves to be as impossible to meet as it now appears it will be.

Dated: March 15, 2007
Wilmington, Delaware

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